IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4516 OF 1994

1. Raptakos Brett & Co. Ltd.)
a Company incorporated under)
the Indian Companies Act, 1913)
and having its registeed office)
at Dr. Annie Besant Road,)
Worli, Bombay 400 018.)

2. Dinesh Ramachandra Kulkarni)
of Bombay Indian Inhabitant,)
Director of the 1st petitioner)
having his office at Dr. Annie)
Besant Road, Worli,)
Bombay 400 018.).. Petitioners

Versus

1. Vijay G. Pandit)
of Bombay Indian Inhabitant,)
residing at Vasant Kate's Chawl,)
Ganesh Nagar, Near Church,)
Dombivli (W), Dist. Thane.)

2. Shri P.J. Shah)
Presiding Officer, 3rd Labour)
Court, Thane, Dr.Hajarnis)
Bungalow, Utalsar, Thane.).. Respondents

Mr.P.K. Rele, Senior Counsel with Mr.Piyush Shah for the petitioners.

Mr.Y.M. Pendse for respondent No.1.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 6TH OCTOBER 2004

ORAL JUDGMENT :

1. Heard the learned advocates for the parties. Perused the records.

2. The petitioners challenge the Award Part-I

passed by the Labour Court at Thane in Reference No.81 of 1985 on 11th May 1994 holding that the domestic enquiry held and conducted for proving the charges against the respondent No.1 was not fair and proper and, therefore, the petitioner employer is at liberty to prove the charge of misconduct by adducing the evidence.

3. Few facts relevant for the decision are as under:-

. The respondent No.1, who was working in Maintenance Department of the petitioners' factory at 1st Pokhran Road, Kajiwada, Thane. The respondent No.1 having joined the services from 1st January 1980 was allegedly found involved in a quarrel with a co-worker by name V.K. Shirishkar on 15th December 1982 after the shift hours while travelling in company's bus to Kopri Colony, Thane Railway Station. It appears that the allegation against the respondent No.1 included assault on the co-worker as well as causing injury by throwing and hurling stones at him. The said co-worker had lodged a complaint with the petitioners on 16th November 1982 in that regard. On the basis of the said complaint, the charge-sheet dated 28th December 1982 alleging grave and serious misconduct under clauses

24(k) and 24(l) of the Model Standing Orders came to be issued to the respondent No.1 calling for his explanation. By a letter dated 29th December 1982, the respondent requested for 4 days time to submit the explanation. The Enquiry Officer came to be appointed by the petitioners on 31st December 1982 and it was simultaneously informed to the respondent. Under letter dated 3rd January 2003, the respondent denied the charges and submitted his explanation. The enquiry commenced on 8th January 1983. One Shri P.S. Sawant, Vice President of Maharashtra General Kamgar Union appeared on behalf of the respondent in the said enquiry and sought the adjournment of the hearing of the enquiry which was adjourned to 20th January 1983. It was again adjourned at the instance of Shri P.S. Sawant to 31st January 1983, on which day the respondent placed on record of the enquiry, a letter dated 29th January 1983 from Maharashtra General Kamgar Union appointing Shri S.A. Vaswani to defend the respondent in the said enquiry. The enquiry was adjourned to 19th February 1983 and thereafter again to 8th March 1983 in order to enable the parties to file papers and authorisations, etc. It was adjourned for the same purpose to 24th March 1983, on which day at the request of Shri Vaswani it was adjourned to 21st April 1983 and again on the

later date to 27th April 1983 at the instance of Shri Vaswani. On 27th April 1983, neither the respondent nor his representative nor the petitioner was present and, therefore, the enquiry was adjourned to 24th May 1983 and it was accordingly informed to the parties by the Enquiry Officer.

4. On 24th May 1983 when the enquiry was to commence at about 2.00 p.m. as per the intimation by the Enquiry Officer issued earlier, the same was attended by the respondent and the management's representative before the Enquiry Officer and on that occasion, the respondent placed on record a letter from the Association of Engineering Workers dated 23rd May 1983 informing the Enquiry Officer that Shri Vaswani was unable to attend the enquiry proceeding on behalf of the respondent and, therefore, Shri V.C. Gonsalves would represent the respondent in place of Shri Vaswani, however it was not suitable for Shri Gonsalves to attend the hearing on that day and therefore request was made for adjournment of the hearing to 6th, 8th and 9th June 1983. The request for adjournment was objected to by the representative of the petitioners bringing to the notice of the Enquiry Officer that several earlier adjournments were granted at the request of the

respondent and there was sufficient time to the respondent to make appropriate arrangement for his defence. The Enquiry Officer refused to grant adjournment and informed the respondent that he was proceeding with the enquiry and asked the petitioners' representative to lead the evidence. The respondent was informed to participate in the enquiry and to cross-examine the management's witness and to examine his witnesses including himself and further that he could file the written statement at the end. The respondent, however, left the place of enquiry and did not further participate in the said enquiry. The Enquiry Officer thereafter submitted his report dated 3rd June 1983 and by order dated 4th April 1984, the petitioners informed the respondent that he was discharged from the services of the company with effect from 4th April 1984. The respondent thereupon approached the Labour Commissioner by raising a dispute in relation to his discharge from services and demanding reinstatement with back wages. Conciliation proceedings failed and the dispute was referred for adjudication under section 10(1)(c) read with section 12(5) of the Industrial disputes Act, 1947 under order dated 23rd August 1985. The Labour Court, after hearing the parties, passed the impugned Part-I Award on the issue

as to whether the enquiry held against the respondent by the petitioners was fair and proper, and hence the present petition.

5. While challenging the impugned Award the learned advocate appearing for the petitioners submitted that the Labour Court erred in holding that the attitude of the Enquiry Officer in rejecting the request made for adjourning the enquiry amounted to denial of an opportunity to the respondent to defend in the enquiry, ignoring the fact that the enquiry was adjourned on several occasions prior to that date at the instance of the workman. Besides that, the records apparently reveal sufficient opportunity as well as availability of time to make necessary arrangement to defend in the enquiry against him. He has further submitted that the finding of the Labour Court that the Enquiry Officer acted hastily in concluding the enquiry is contrary to the materials on record inasmuch as that the materials on record disclose enough opportunity having been given to the workman to defend his case and that the respondent himself walked out of the enquiry without any justification or cause for the same and, therefore, there was no option left to the Enquiry Officer to proceed with the enquiry and to conclude the same.

According to the learned advocate for the petitioners, the respondent himself having chosen to walk out of the enquiry, the finding that the enquiry held and conducted was not fair and proper is not only contrary to the materials on record but is totally perverse and, therefore, the impugned Award Part-I should not be sustained and should be set aside holding that the domestic enquiry conducted by the petitioners was fair and proper. He has further submitted that the adjournment was not a matter of right for the respondent and, therefore, the Enquiry Officer was not compelled to adjourn the matter. Inspite of the same, the Enquiry Officer had shown enough indulgence to the respondent and, therefore, he could not have been accused of having conducted the enquiry in haste. There was no material on record, according to the learned advocate for the petitioners, to hold that the discretion vested in the Enquiry Officer was exercise arbitrarily so as to arrive at the finding that the enquiry conducted was not just and proper. Reliance is sought to be placed in the decision of the Apex Court in the matter of **Brook Bond India Ltd. v. Subba Raman - 1961 I LLJ 417**, of this Court in the matter of **Mulji Mangal v. India Water Proofing Company - 1983 LLN 262**, and in the matter of **Arvinder Singh v. State of Punjab - 1986 (1) LLN 538**,

as well as **T.V. Ramana Murthy v. A.P. Agricultural University - 1990 (1) CLR 83**.

6. On the other hand, the learned advocate for the respondent, by drawing attention to Model Standing Order No.25(4), submitted that the enquiry was undisputedly conducted in English and the proceedings were translated to the workman by his representative without obtaining the choice in which the enquiry was required to be conducted in terms of the said provisions of the Model Standing Order and consequently when the application for adjournment was refused on 24th May 1983, no purpose would have been served by continuing to be at the place of enquiry by the respondent as he would not have understood the proceedings nor could have defended himself effectively and, therefore, no fault can be found with the finding of the Labour Court regarding enquiry conducted was not proper and fair. He further submitted that considering the seriousness of the charges which were levelled against the respondent, and the order of discharge from service issued by the petitioners, the assistance of the representative was absolutely necessary for the respondent apart from the language problem. He further submitted that the adjournment was refused ignoring the fact that the

respondent was not represented at the relevant time by any representative before the Enquiry Officer, and being so, it cannot be said that the enquiry was conducted in a fair and proper manner and the said contention of the respondent having been accepted by the Labour Court, no interference is called for in the impugned Award in writ jurisdiction. He has further submitted that it is not the case of abandoning or walking out of the enquiry by the respondent as sought to be argued on behalf of the petitioners, but it was a case of unability of the respondent to participate in the facts and circumstances of the case on the relevant date, and the same having been ignored by the Enquiry Officer, the Labour Court was justified in observing that the enquiry had proceeded with great haste. Reliance is sought to be placed on the decisions in the matter of **Inder Mohan Bhalla, Assistant General Manager (Admn.) v. Chairman, Hon'ble Additional Industrial Tribunal - 2004 (102) FLR 722** and in the matter of **Nandini Mehta v. Amol Kate - 2003 III CLR 856**.

7. As regards the contention that this is not a fit case for interference under Article 227 of the Constitution of India being a Part-I Award holding that the enquiry was not conducted in a fair and proper

manner and that there is enough opportunity for the petitioners to lead evidence and to establish the charge and reliance in that regard in the decision of the Andhra Pradesh High Court in I.M. Bhalla's case (supra), as rightly submitted by the learned advocate for the petitioners, it is too late for the respondent to raise any such issue at the final hearing. Undisputedly, the petition relates to the year 1994 and we are in the year 2004. Being so, the submission in that regard is to be rejected in limini.

8. As already pointed out earlier, while referring to the facts of the case, undoubtedly the same discloses that the enquiry was adjourned from time to time at the instance of the respondent. Records also disclose that the respondent changed his representatives twice; from Shri P.S. Sawant to Shri V.A. Vaswani and from Shri Vaswani to Shri V.C. Gonsalves. At the same time, it also discloses that the hearing from 27th April 1983 to 24th May 1983 was adjourned not on account of the respondent alone, but the hearing of 27th April 1983 was not attended by either of the parties.

9. It is settled law that before considering the matter on merits, the Labour Court in reference has to

first ascertain whether the enquiry conducted against the employee was fair and just unless it is not disputed by the employee. Undoubtedly, in the case in hand, the respondent had disputed that the enquiry was fair and proper and, therefore, it was necessary for the Labour Court to decide the same based on materials placed on record by both the parties. The Labour Court in the case in hand considering such materials has undoubtedly observed that the Enquiry Officer, after rejecting the request made by the replaced representative of the workman for adjournment of the enquiry, proceeded to conduct the enquiry on the ground that the representative had not remained present himself in person before the Enquiry Officer. In those circumstances, the Labour Court has observed that "the attitude of the Enquiry Officer in rejecting the request made for adjourning the enquiry amounts to denial of an opportunity to defend the enquiry". The Labour Court has further observed that the Enquiry Officer acted hastily in concluding the enquiry when he could have informed the workman and his representative that they could avail the opportunity to cross-examine the witnesses meaning thereby that even if the Enquiry Officer was to proceed to record the examination in chief by refusing adjournment of 24th May 1983, he could

have reserved the right in favour of the workman to cross-examine those witnesses on the adjourned date. In these circumstances, the Labour Court has held that the enquiry conducted for proving the charges alleged against the respondent was not fair and proper.

10. Perusal of the proceeding-sheet dated 24th May 1983, which is filed along with the petition, apparently reveals that the Enquiry Officer was very much disturbed on failure on the part of the representative of the respondent to appear before him for seeking adjournment of the enquiry. Undoubtedly, it has also been recorded by the Enquiry Officer that he was convinced that adjournment sought for was not to be granted as already 5 months had passed from the commencement of the enquiry and there was sufficient time available from 2nd May 1983 to 24th May 1983 to the respondent to make necessary alternative arrangement to replace his earlier representative. Obviously reference to the period from 2nd May 1983 to 24th May 1983 was on account of the letter dated 27th April 1983 (Exh.4) received by the respondent on 2nd May 1983 and the said letter related to unability of Shri Vaswani to represent the respondent. It has also been observed by the Enquiry Officer that he had no hesitation to record that all

throughout the workman had resorted to dilatory method to prolong the enquiry without sufficient ground. According to the learned advocate for the petitioners, the refusal of adjournment and proceeding with the enquiry in those facts and with the above mentioned recording by the Enquiry Officer would constitute exercise of discretion by the Enquiry Officer in judicious manner whereas the same is sought to be disputed by the learned advocate appearing for the respondent, and the Labour Court, though has not said in so many words that the discretion was exercised arbitrarily by the Enquiry Officer, has in terms stated that the rejection of adjournment amounted to denial of opportunity to defend and even the refusal of opportunity to cross-examine discloses haste on the part of the Enquiry Officer in concluding the enquiry, which virtually amounts to holding that the discretion was not exercised judiciously by the Enquiry Officer.

11. It is, therefore, obvious that the adjournment was refused by the Enquiry Officer essentially on three counts. Firstly that the representative of the workman had not appeared personally to seek adjournment, secondly that there was sufficient time from 2nd May 1983 to 24th May 1983 to make necessary alternative

arrangement to replace Shri Vaswani and yet no such arrangement was made by the respondent, and thirdly that the workman had resorted to dilatory method to prolong the enquiry without sufficient ground.

12. As regards the first ground for refusal of the adjournment, obviously it discloses total arbitrariness on the part of the Enquiry Officer to expect a representative to appear personally to seek adjournment when the letter of seeking adjournment itself disclosed unability of the representative to appear on the said date. The absence being justifiable or not is totally a different issue, but once the representative had informed the Enquiry Officer that it was not possible for him to appear on that date as it was not convenient for him, it was certainly impetuous reaction on the part of the Enquiry Officer to expect the representative to appear before him and then to seek adjournment of the hearing. Hence as far as the first ground for refusal of adjournment is concerned, the learned advocate for the respondent is justified in contending that it disclosed arbitrariness on the part of the Enquiry Officer.

13. As regards the second ground for refusal of

adjournment is concerned, undoubtedly the letter dated 27th April 1983 disclosed unability on the part of Shri Vaswani to represent the workman. Equally, it is also true that considering the fact that the said letter was stated to have received by the respondent on 2nd May 1983 and the hearing of the matter was fixed on 24th May 1983, the respondent had sufficient time to make necessary arrangement to procure his representative for the enquiry, but before arriving at the said finding, it was necessary for the Enquiry Officer to ascertain as to when the letter dated 27th April 1983 by the Enquiry Officer informing the workman about fixing of the hearing of the matter on 24th May 1983 was communicated and received by the respondent. The proceeding-sheet of 24th May 1983 nowhere discloses any reference to this aspect. Undisputedly, on 27th April 1983 neither the petitioners nor the respondent had appeared before the Enquiry Officer and on that count, the enquiry was adjourned to 24th May 1983. In other words, the fact that the enquiry was adjourned from 27th April 1983 to 24th May 1983 was not known nor there is any material on record to arrive at any conclusion in that regard that it was known to the respondent either on 27th April 1983 itself or immediately thereafter and there is no observation in that regard in the proceeding-sheet of

24th May 1983. Considering the same, the conclusion which was sought to be drawn that there was sufficient time available to the respondent to make necessary alternative arrangement to procure the representative on 24th May 1983 was arrived at without any material on record to support such finding and, therefore, certainly it cannot be held to be by way of a judicious exercise of discretion by the Enquiry Officer.

14. As regards the third ground that the respondent had resorted to dilatory method to prolong the enquiry without sufficient ground is concerned, undoubtedly the same was arrived at on the basis of adjournments granted to the respondent on earlier occasions, and indeed, as rightly submitted by the learned advocate for the petitioners, the records disclose that as many as 8 times the matter was adjourned on request on behalf of the respondent. That is also apparent from the proceeding-sheets of the enquiry proceedings placed on record by the petitioners. However, it is also to be noted that the enquiry from 8th January 1983 to 20th January 1983 was adjourned pursuant to the request for adjournment having been granted consequent to no objection on the part of the petitioners. Further, the adjournment from 20th January 1983 to 31st January 1983

was also granted with no objection on the part of the petitioners. The adjournment from 5th February 1983 to 19th February 1983, though was objected to by the petitioners, the Enquiry Officer was of the opinion that one more opportunity was required to be given to the workman. The enquiry was adjourned on 8th March 1983 at the request of the petitioners which was not objected to by the workman, and it was adjourned to 24th March 1983. The hearing was adjourned from 11th April 1983 to 21st April 1983 at the request of the respondent with no objection on behalf of the petitioners. Hearing was adjourned to 24th April 1983 from 21st April 1983 at the request of the respondent inspite of objection on the part of the petitioners while holding that the Enquiry Officer was of the opinion that one more chance was required to be given to the workman. As already pointed out above, the enquiry was adjourned from 27th April 1983 to 24th May 1983 on account of absence of both the parties. Taking into consideration these undisputed facts, also clearly revealed from the records, can it be said that the workman had resorted to dilatory methods to prolong the enquiry without sufficient ground? On the one hand, the petitioners had not objected to adjournment from time to time and on two occasions though there was objection on the part of the

petitioners, the Enquiry Officer himself had held that opportunity was required to be given to the respondent. In the background of these findings at the time of adjourning the hearing from time to time, there was no occasion for the Enquiry Officer to draw a conclusion that the respondent was resorting to dilatory methods to prolong the enquiry. If at all there was any attempt to prolong the enquiry, it was with the consent of both the parties and even the Enquiry Officer himself was responsible for the same for having granted adjournment on mere request and there being on objection on the part of the other side. Nothing had prevented the Enquiry Officer from going ahead with the matter even on earlier occasions. If the Enquiry Officer was so concerned and was anxious to dispose of the enquiry proceedings expeditiously, it was highly unfair on the part of the Enquiry Officer to accuse the workman of having resorted to dilatory methods in the background of the facts disclosed above thereby totally forgetting the consent of the petitioner for such prolongation of the enquiry, including his own contribution for the same. Certainly, therefore, the third ground on which the adjournment was refused was in arbitrary exercise of discretion of the Enquiry Officer.

15. For the reasons stated above, therefore, it is apparent that the refusal of adjournment by the Enquiry Officer was not in judicious exercise of discretion, but it is apparently in arbitrary exercise thereof.

16. Undoubtedly, the learned advocate for the petitioners is justified in submitting that the ground regarding the enquiry being conducted in English and it was not known to the respondent and that therefore no purpose would have been served by continuing at the place of enquiry after the adjournment was refused, was neither raised before the Labour Court nor by filing any reply in the matter. Even otherwise, once the ground was not raised before the Labour Court, the respondent is not justified in supporting the order of the Labour Court on the ground extraneous to the basis on which the Labour Court has passed the order, and the Labour Court apparently has not considered the said issue. Being so, it is not necessary for me to deal with the said issue and for the same reason, the decision in the matter of Nandini Mehta (supra) has no assistance to the respondent to contend that the impugned order is justified.

17. The learned advocate for the respondent,

however, is justified in submitting that the observation by the Labour Court that the Enquiry Officer acted hastily in the matter cannot be found fault with. The proceeding-sheet of 24th May 1983 undoubtedly discloses recording by the Enquiry Officer that the respondent refused to participate in the enquiry in the absence of his representative and he left the place of enquiry. However, the said recording is preceded with the following recording by the Enquiry Officer:-

> Shri Pandit has been requested to participate in the enquiry and to cross examine the management's witnesses and to examine his witnesses including himself and he can file his written statement at the end."

In other words, the Enquiry Officer expected the workman to cross examine the management's witnesses and to examine himself and his witnesses in the said enquiry immediately after the adjournment application was rejected by the Enquiry Officer. Undoubtedly, consequent to the rejection of the application for adjournment, the enquiry was required to be proceeded with. Nonetheless, considering the fact that the workman had expressed his unability to participate in

the enquiry in the absence of his representative, and bearing in mind that even on earlier occasions, the adjournment was granted on account of unability of the representative of the workman to appear before the Enquiry Officer, the necessity of the assistance of the representative of the workman in the enquiry proceeding was clearly accepted by the Enquiry Officer and, therefore, it was necessary for the Enquiry Officer to give fair opportunity to the respondent to cross examine the witnesses of the management and further to give opportunity to lead his evidence in the matter and certainly this could have been done by informing the respondent that the examination in chief of the petitioners' witnesses could have been recorded on that date on which the adjournment was refused, while reserving the right in favour of the respondent to cross examine those witnesses on some other day. Having not done so, obviously the Enquiry Officer had acted arbitrarily and with haste in proceeding with the enquiry and, therefore, the finding as regards the enquiry having been effected with haste cannot be found fault with.

18. The decision of the Apex Court in Brook Bond India Ltd. (supra) undoubtedly lays down the law that

if a workman withdraws from the domestic enquiry on the refusal of the Enquiry Officer to the workman being represented at the domestic enquiry by a lawyer or an outsider, then the decision of the Enquiry Officer as a result of exparte enquiry finding the concerned workman guilty of the charges levelled against him cannot be held to be invalid. It was a matter of withdrawal of the workman from enquiry on account of refusal on the part of the Enquiry Officer to allow the workman to be represented by a lawyer or an outsider. It is well settled law that the employer of the workman is not entitled to be represented by a lawyer or an outsider as a matter of right and it all depends upon the statutory provisions governing the relationship of the employer and the employee in that regard. Bearing in mind the same, if the application of the workman to allow him to be engaged by a lawyer is refused, that would not vitiate the enquiry and, therefore, if the workman withdraws or refuses to take part in such an enquiry on the ground of refusal to be represented by a lawyer or an outsider, certainly the finding in favour of the management cannot be held to be invalid nor it can be held that the enquiry conducted in those circumstances to be not proper or unjust. Considering the facts in which the said ruling was delivered by the Apex Court,

it is of no assistance to the petitioners in the case in hand.

19. The decision of the Division Bench of this Court in the case of Mulji Mangal (supra), undoubtedly lays down that there is no rule that the Enquiry Officer should adjourn the hearing on the first occasion. That was a case where on the very first occasion when an application for adjournment was made, it was rejected and the enquiry had proceeded. The Division bench has clearly observed that "Indeed, the perusal of letter dated 23 August 1978 indicates that the reason for seeking adjournment on the ground that the union leader is not feeling well to attend the enquiry is extremely vague and unsatisfactory". In other words, there was no justifiable ground disclosed for adjournment of the hearing and, therefore, the Enquiry Officer was justified in refusing the adjournment. In the case in hand, as already seen above, refusal of adjournment was not on any justifiable ground, but purely an arbitrary exercise of powers by the Enquiry Officer. Being so, the decision of the Division bench in the case of Mulji Mangal is also of no help to the petitioners.

20. A learned Single Judge of Andhra Pradesh High

Court in the case of T.V. Ramana Murthy (supra) has held that the rules of natural justice cannot come to the rescue of a person who makes himself scarce in participating in the disciplinary proceedings initiated against him or in case of persons who try to protract the matter on some pretext or the other and that the concept of justice and fair play applies with equal force on both sides. It has been further held that it is not as if that disciplinary authority alone is to comply with such rules of justice and fair play but the delinquent officer is also supposed to play according to the rules and cannot indulge in abusing the rules of natural justice for his own benefit. One fails to understand the relevancy of this decision in the case in hand. As observed above, refusal of adjournment was purely in an arbitrary exercise of jurisdiction by the Enquiry Officer and, therefore, there was no fair play on the part of the Enquiry Officer in that regard in the case in hand. Hence the decision is of no help to the petitioners.

21. In Arvinder Singh’s case (supra), a learned Single Judge (as he then was in Punjab & Haryana High Court) had held that every occasion in the proceeding cannot be termed as malafide or amounting to breach of

the rules of natural justice and each case will have to be considered in the facts and circumstances of that case. Undoubtedly, as observed above, in the facts and circumstances of the case in hand, the refusal of adjournment was apparently in an arbitrary exercise of jurisdiction by the Enquiry Officer.

22. For the reasons stated above, therefore, I do not find any justification for interference in the impugned Award which has been passed after taking into consideration the failure on the part of the Enquiry Officer to conduct the enquiry in a fair and proper manner. Hence the finding cannot be found fault with and, therefore, the petition fails and hereby dismissed. Rule is discharged with no order as to costs.

(R.M.S. KHANDEPARKAR J.)